

CHAPTER 10 VACATING LEASED SPACE BEFORE EXPIRATION

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CHAPTER 10

VACATING LEASED SPACE BEFORE EXPIRATION

10.A. GENERAL

10.A.1. Applicability

This chapter shall be used for any instance where FDIC vacates leased space before expiration of the lease term.

FDIC may wish to vacate leased space prior to the expiration of the lease term as a consequence of:

- Corporate Strategic Plan;
- Mission need; or
- Landlord failure to comply with the lease terms, particularly with respect to the condition of the leased space.

This chapter does not apply to the situation where there may be a short overlap of the existing Lease and the commencement of a new Lease serving the same requirement.

10.A.2. Scope

This chapter applies to situations where FDIC has a right, under the Lease, to vacate space prior to the expiration of the lease term because of one of the following:

- Early termination option;
- Contraction option;
- Remedy for Landlord default;
- Remedy for leased space untenability; and
- Where FDIC needs no longer require the leased space but there are no rights existing under the Lease to terminate FDIC's obligation.

10.A.3. Notification

The Associate Director, ACSB, or Regional Manager, DOA, shall notify the Director, DOA, of any intention to vacate leased space prior to the expiration of the lease term.

10.A.4. Avoidance of Paying Rent for Vacant Leased Space

FDIC policy is to avoid, to the maximum extent possible, vacating leased space where FDIC must continue to pay rent.

10.A.5. Sublease vs. Buyout

If space is vacated before expiration of the lease term, FDIC shall seek to mitigate losses through a buyout of the Lease,

unless a sublease is likely and economically advantageous.

10.A.6. Subleasing

If no other approach can be negotiated with the Landlord, vacant leased space shall be submitted to the Assistant Director, Leasing Section, for subleasing.

10.B. ROLES AND RESPONSIBILITIES**10.B.1. Program Office(s)**

The Program Office(s) shall:

- Prepare justification if the termination is at their request;
- Confirm that it can vacate leased space in a timely manner when notified of a termination or contraction option by the Leasing Specialist; and
- Concur on the Lease Case.

10.B.2. Director, DOA

The Director, DOA, shall be notified of any intention to vacate leased space prior to expiration of the lease term.

The Director, DOA, shall approve any decision to vacate leased space which may result in continued rent payment on the vacant space which was not contemplated by the original Lease.

10.B.3. Associate Director, ACSB

For headquarters and regional office leases, the Associate Director, ACSB, shall:

- Approve the Documentation of Need when exercising termination or contraction rights pursuant to the Lease;
- Notify the Director, DOA, that FDIC intends to vacate leased space before expiration of the lease term and obtain the consent of the Director, DOA, if the vacation will result in paying rent for vacant space;
- Approve the Lease Case to vacate leased space prior to expiration of the lease term; and
- Sign the notification letter of termination for cause, if applicable.

The Associate Director, ACSB, shall authorize Fitness and Integrity waivers and the use of the abbreviated Fitness and Integrity certification.

10.B.4. Regional Manager, DOA

For field office and warehouse leases, the Regional Manager, DOA, shall:

- Notify the Director, DOA, that FDIC intends to vacate leased space before expiration of the lease term and obtain the consent of the Director, DOA, if the vacation will result in paying rent for vacant space;
- Approve the Lease Case to vacate leased space prior to expiration of the lease term;
- Sign the notification letter of termination for cause, if

applicable; and

- Review the Amendment documenting the termination or contraction.

**10.B.5. Assistant Director,
Leasing Section**

For headquarters and regional office leases, the Assistant Director, Leasing Section, shall:

- Concur on Lease Case;
- Review Amendments; and
- Notify the Associate Director, ACSB, of any termination or contraction which may result in FDIC paying rent for vacant space.

10.B.6. Leasing Specialist

The Leasing Specialist shall:

- Notify the Assistant Director, Leasing Section, or Regional Manager, DOA, of any action which may result in FDIC paying rent for vacant space;
- Notify the Program Office(s) of any early termination rights or contraction rights in the Lease;
- Negotiate with the Landlord;
- Obtain a legal opinion;
- Perform a financial analysis;
- Prepare the Lease Case;
- Ensure that the Lease Case is approved and that the Amendment is prepared and signed;
- Enter data into SLIMS, generate a new Lease Fact Sheet, and update the official post-award lease file;
- Engage a Broker to find a subtenant; and
- Notify the Assistant Director, Leasing Section, of all requirements for subleasing.

**10.B.7. Security Management
Section (SMS)**

The SMS shall perform a credit and background check on the proposed subtenant and its principals.

10.B.8. Legal Division

The Legal Division shall:

- Prepare a legal opinion on any intended termination or contraction;
- Participate in all negotiations;
- Review the Amendment if contraction or termination; and
- Prepare the letter for notification of termination for cause.

**10.B.9. Labor and Employee
Relations Specialist,**

The Labor and Employee Relations Specialist, PSB, shall forward a copy of the approved Documentation of Need and

PSB

the Amendment to the NTEU and shall coordinate all subsequent comments with the Leasing Specialist.

10.C. CONTRACTION OR TERMINATION PROVIDED FOR IN THE LEASE

10.C.1. Notification to Program Office(s)

The Leasing Specialist shall notify the Program Office(s) 6 months before any notification is to be given to the Landlord of any right to terminate or contract. The notification shall include any associated costs.

The Program Office(s) shall confirm its intent to take advantage of the termination or contraction and that it is able to vacate the space in a timely manner.

10.C.2. Preparation of Lease Case

The Leasing Specialist shall prepare a Lease Case for concurrence by the Program Office(s) and approval in accordance with the Delegations of Authority.

The Lease Case shall consist of:

- Background information;
- Negotiation summary;
- Financial analysis;
- Legal opinion; and
- Documentation of any deviations from policy.

10.C.3. Amendment

The Amendment documenting the termination or contraction may be prepared by either, the:

- Legal Division;
- Leasing Specialist; or
- Landlord.

In all cases, the Legal Division shall review the Amendment.

10.C.4. Review

The Assistant Director, Leasing Section, or Regional Manager, DOA, or designee, as applicable, shall review the Amendment.

10.C.5. Execution Package

Before the Associate Director, ACSB, or Regional Manager, DOA, signs the Amendment, the Leasing Specialist shall prepare the execution package which consists of:

- 4 copies of the Amendment signed by the Landlord;
- Legal opinion; and
- Approved Lease Case.

10.C.6. FDIC Signature

The Assistant Director, Leasing Section, shall present the execution package to the Associate Director, ACSB, for headquarters and regional office leases and the Leasing

10.C.7. Distribution

Specialist shall present the execution package to the Regional Manager, DOA, for field office and warehouse leases.

The Associate Director, ACSB, or Regional Manager, DOA, or designee, shall sign and date the Amendment.

The Leasing Specialist shall distribute the signed and dated Amendment to:

- Official lease file (1);
- Legal Division (1); and
- Landlord (2).

Copies shall be provided to:

- Chief, Corporate Services Staff; and
- Labor Relations.

10.C.8. Review by NTEU

The Leasing Specialist shall forward a copy of the approved Amendment to the Labor and Employee Relations Specialist, PSB, who shall forward the copy to the NTEU for review.

All comments received from NTEU shall be coordinated by the Labor and Employee Relations Specialist, PSB, and then forwarded to the Leasing Specialist.

10.C.9. SLIMS

After signature by the Landlord and FDIC, the Leasing Specialist shall enter information from the Amendment into SLIMS. The Leasing Specialist shall generate a new Lease Fact Sheet and obtain the necessary signatures as defined in LPM Section 7.C.3.

10.C.10. Filing

The Leasing Specialist shall ensure that the original Amendment and a copy of the signed Lease Fact Sheet are placed in the official post-award lease file.

All comments received from the NTEU through the Labor and Employee Relations Specialist, PSB, shall be placed in the official lease file.

10.D. TERMINATION OR CONTRACTION NOT PROVIDED FOR IN THE LEASE

10.D.1. Decision to Terminate or Contract and No Provision in the Lease

If, as a result of a Program Office(s) mission need, the FDIC does not require leased space for which FDIC is obligated to pay rent, the Program Office(s) shall notify the Leasing Specialist and will:

- Identify specific leased space which is no longer required;
- Specify the reason why the leased space is no longer required; and
- Identify the date on which the Program Office(s) can vacate the leased space.

10.D.2. Legal Division Review

The Leasing Specialist shall notify the Legal Division and the Legal Division shall review the Lease to determine if vacating the space is not a breach under the Lease. The Legal Division shall provide an opinion to be included in the Lease Case.

10.D.3. Negotiation

The Leasing Specialist, together with the Legal Division, shall attempt to negotiate a discounted buyout that, at a minimum, does not exceed the net present value of the remaining obligation.

10.D.4. Preparation of Lease Case

The Leasing Specialist shall prepare a Lease Case for concurrence by the Program Office(s) and approval in accordance with the Delegations of Authority.

The Lease Case shall consist of:

- Background information;
- Negotiation summary;
- Financial analysis (comparing costs associated with the buyout, continued payment of the Lease, and any potential revenue generated by subleasing);
- Legal opinion; and
- Documentation of any deviations from policy.

If the Leasing Specialist is unable to reach an agreement with the Landlord, the Leasing Specialist shall notify the Assistant Director, Leasing Section, or Regional Manager, DOA, as applicable, that the Program Office will be vacating leased space on which the FDIC will continue to pay rent.

10.D.5. Amendment

The termination or contraction shall be documented in an Amendment prepared by either, the:

- Legal Division;
- Leasing Specialist; or
- Landlord.

The Legal Division shall review the Amendment.

10.D.6. Review

The Assistant Director, Leasing Section, or Regional Manager, DOA, or designee, shall review the Amendment before the Landlord signs it.

10.D.7. Execution Package

Before the Associate Director, ACSB, or Regional Manager, DOA, signs and dates the Amendment, the Leasing Specialist shall prepare the execution package which consists of:

- 4 copies of the Amendment signed by the Landlord;
- Legal opinion; and
- Approved Lease Case.

10.D.8. FDIC Signature

The Assistant Director, Leasing Section, shall present the execution package to the Associate Director, ACSB, for headquarters and regional office leases and the Leasing Specialist shall present the execution package to the Regional Manager, DOA, for field office and warehouse leases.

The Associate Director, ACSB, or Regional Manager, DOA, or designee, shall sign and date the Amendment.

10.D.9. Distribution

The Leasing Specialist shall distribute the signed and dated Amendment to:

- Official lease file (1);
- Legal Division (1); and
- Landlord (2).

Copies shall be provided to:

- Chief, Corporate Services Staff; and
- Labor Relations.

10.D.10. Review by NTEU

The Leasing Specialist shall forward a copy of the approved Amendment to the Labor and Employee Relations Specialist, PSB, who shall forward the copy to the NTEU for review.

All comments received from NTEU shall be coordinated by the Labor and Employee Relations Specialist, PSB, and then forwarded to the Leasing Specialist.

10.D.11. SLIMS

After signature by the Landlord and FDIC, the Leasing Specialist shall enter information from the Amendment into SLIMS. The Leasing Specialist shall generate a new Lease Fact Sheet and obtain the necessary signatures as defined in LPM Section 7.C.3.

10.D.12. Filing

The Leasing Specialist shall ensure that the original Amendment and a copy of the signed Lease Fact Sheet are placed in the official post-award lease file.

All comments received from the NTEU through the Labor and Employee Relations Specialist, PSB, shall be placed in the official lease file.

10.E. TERMINATION OR CONTRACTION FOR CAUSE OR UNTENANTABILITY**10.E.1. Termination or Contraction for Cause**

Under certain circumstances, FDIC shall have the right to terminate or contract a Lease for cause because of a Landlord breach. If such termination or contraction is considered, the Leasing Specialist shall refer the matter to the Legal Division for an opinion assessing termination or contraction rights and relief under the Lease. The Legal Division shall work with the Leasing Specialist to ensure all necessary notices and prerequisites to termination or contraction have been satisfied.

The Legal Division shall prepare notification of the termination or contraction for cause to the Landlord. The notification shall be signed and dated by the Associate Director, DOA, or Regional Manager, DOA.

The Leasing Specialist shall ensure that alternate space is available to relocate the Program Office(s).

10.E.2. Termination for Untenantability

If the Facilities Manager believes the Leased Space is "untenantable," as defined pursuant to the particular Lease, the Facilities Manager shall document the untenantability, in writing, and send the Leasing Specialist a copy of its documentation. The Leasing Specialist and the Legal Division shall determine if the referred condition makes the Leased Space "untenantable" pursuant to the Lease.

The Leasing Specialist shall notify the Landlord in writing and set a date for remedy by the Landlord. If the Landlord does not correct the problem, the Legal Division shall assess FDIC rights and remedies.

If termination or contraction is pursued, the Associate Director, ACSB, or Regional Manager, DOA, shall notify the Director, DOA, immediately.

10.E.3. Notification of NTEU

The Leasing Specialist shall send a copy of the notice sent to the Landlord and the notice sent to the Director, DOA to the Labor and Employee Relations Specialist, PSB, who shall forward them to the NTEU.

10.F. SUBLEASING

10.F.1. Assignment

For all leases where FDIC is vacating leased space prior to expiration of the lease term, and is unable to negotiate an approved buyout with the Landlord, and does not have termination or contraction rights, the Leasing Specialist shall notify the Assistant Director, Leasing Section, that the leased space will be available for sublease. The Assistant Director, Leasing Section, shall assign the Lease to a Leasing Specialist in the Leasing Section to begin the subleasing effort.

Administration of vacated leased space remains with the Leasing Specialist, who, prior to notification of the Leasing Section, was performing lease administration until execution of a sublease. Upon execution of a sublease, administration of the sublease will be the responsibility of the Leasing Section.

10.F.2. Review of Lease

The Leasing Specialist, Leasing Section, in conjunction with the Legal Division, shall review the Lease to determine if there are any terms and conditions of the Lease that affect any proposed sublease.

10.F.3. Continued Negotiations With Landlord

The Leasing Specialist, Leasing Section, shall continue to negotiate with the Landlord to obtain a buyout. If initial discussions are not productive, the Leasing Specialist, Leasing Section, shall periodically contact the Landlord to determine whether circumstances have changed.

10.F.4. Notification to Related Agencies

The Leasing Specialist, Leasing Section, shall contact other financial regulatory agencies, GSA, and the Landlord to determine if they have a need for the space.

10.F.5. Use of Broker

If the Leasing Specialist, Leasing Section, is unsuccessful in obtaining a buyout or interest from a related agency, the Leasing Specialist shall engage a Broker to market the leased space.

10.F.6. Background Check

If subtenant(s) are identified, the Leasing Specialist, Leasing Section, shall contact SMS to obtain a background and credit check on the proposed subtenant(s) and its principals.

10.F.7. Consent of Landlord

The Leasing Specialist, Leasing Section, shall obtain the consent of the Landlord in accordance with the Lease.

- 10.F.8. Financial Analysis** The Leasing Specialist, Leasing Section, shall conduct a financial analysis of the sublease.
- 10.F.9. Sublease Document** The Legal Division shall prepare a draft sublease document based on the standard document.
- 10.F.10. Prohibited Clauses** The Leasing Specialist, Leasing Section, shall not negotiate any terms and conditions to the sublease that would increase FDIC financial obligation or make FDIC liable for the actions of the Subtenant(s).
- 10.F.11. Preparation of Sublease Case** The Leasing Specialist, Leasing Section, shall prepare a subLease Case for concurrence by the Program Office(s) and approval in accordance with the Delegations of Authority.
- The Lease Case shall consist of:
- Background information;
 - Negotiation summary;
 - Financial analysis (comparing costs associated with the buyout, continued payment of the Lease, and any potential revenue generated by subleasing);
 - Legal opinion; and
 - Documentation of any deviations from policy.
- 10.F.12. Review** The Assistant Director, Leasing Section, or Regional Manager, DOA, or designee, shall review the sublease before the Landlord signs and dates it.
- 10.F.13. Execution Package** Before the Associate Director, ACSB, or Regional Manager, DOA, signs the sublease, the Leasing Specialist, Leasing Section, shall prepare the execution package which consists of:
- 4 copies of the sublease signed by the Landlord;
 - Legal opinion;
 - Landlord Representations and Certifications Form(s) or abbreviated Fitness and Integrity certification; and
 - Approved subLease Case.
- 10.F.14. FDIC Signature** The Assistant Director, Leasing Section, shall present the execution package to the Associate Director, ACSB, for headquarters and regional office leases and the Leasing Specialist shall present the execution package to the Regional Manager, DOA, for field office and warehouse leases.
- The Associate Director, ACSB, or Regional Manager, DOA, or

designee, shall sign and date the Amendment.

10.F.15. Distribution

The Leasing Specialist, Leasing Section, shall distribute the signed and dated sublease to:

- Official lease file (1);
- Legal Division (1); and
- Subtenant (2).

Copies shall be provided to:

- Chief, Corporate Services Staff; and
- Labor Relations.

10.F.16. SLIMS

The Leasing Specialist shall generate a new Lease Fact Sheet from SLIMS and obtain the necessary signatures as defined in LPM Section 7.C.3.

10.F.17. Filing

The Leasing Specialist shall ensure that the original sublease and a copy of the signed Lease Fact Sheet are placed in the official post-award lease file.

10.F.18. Administration

The Leasing Specialist is responsible for administration of the Lease and sublease, including the receipt of payments.

For field offices, the Corporate Services Staff is responsible for day-to-day facilities management.

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